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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Habitat International Coalition, a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 June 1991]

TOWARDS A DEFINITION OF POPULATION TRANSFER; DIFFERENCES BETWEEN POPULATION TRANSFER AND EVICTIONS AND EFFECTS OF POPULATION TRANSFER

1. This submission addresses the practice of population transfer, dealt with in resolution 1990/17, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-second session.

2. Population transfer is a complex phenomenon which manifests itself in a variety of ways and in different situations. As there is no generally agreed-upon definition for this commonly used term, we suggest a definition and explore some of the central characteristics of this practice.

3. Population transfer may be defined as:

> The movement of large numbers of people, either into or away from a certain territory, with State involvement or passive or active acquiescence of Government and without the free and informed consent of the people being moved or the people into whose territory they are being moved.

4. Population transfer includes the movement of large numbers of people. The practice of population transfer is aimed at distinct racial, ethnic, or religious groups, being separate peoples, nations or minorities within the boundaries of a certain State, and often constitutes part of a larger policy towards this group.

5. Government involvement in mass population movements can range from directly forcing or conducting transfers to supporting or actively encouraging transfers through, for instance, government incentive programmes.

6. Population transfer is not a spontaneous act; it involves planning, policies, and is often legitimized by a legislative basis.

7. Nearly all transfers occur in the absence of free and informed consent either of the people being moved or of the people into whose territory they are being moved. Negotiations between the Government and both affected groups are generally not carried out.

8. Transfers may be conducted in time of peace, or in time of war.

9. We can distinguish broadly two types of population transfer:

(a) The implantation of settlers;

(b) Removal of persons.

10. The most commonly recognized context for the implantation of settlers is into occupied territories, but this form of population transfer also occurs outside of situations involving occupations. The removal of persons may involve forced or forcible relocation into reservations or model villages or away from their traditional homelands.

Differences between population transfer and evictions

11. Confusion may arise between the practice of population transfer and the process of eviction. Population transfer invariably results in one or other form of eviction, whether directly or indirectly. Population transfer may also include evictions as a tool in the process of transferring people. But where population transfer constitutes part of a larger policy directed towards a specific racial or ethnic group and is often rooted in racism, evictions may be carried out to clear certain locations of their inhabitants. The motivations of undertaking movement of persons because of attractive possibilities of the area belongs more to evictions, while movement of persons either because of the ethnic composition of the people being moved or the people into whose territory settlers are being moved constitutes more a motivation for the practice of population transfer.

12. For example, in the case of people being provided with government incentives to voluntarily transfer themselves into the territory of another people - as can be seen in colonial or occupational situations, where the aim is mostly to slowly eradicate the culture or identify of or gain more control

over the population in the receiving region - we cannot speak of evictions, although the transfer may indirectly lead to evictions. In other cases evictions play a more central role in the transfer process.

Human rights dimensions of population transfer

13. Population transfer imposes large costs on the lives of those involved, especially in the context of human rights. In a broad sense, there are two categories of people affected by population transfer: first, those being transferred (settlers or removed persons); and, second, those into whose territory others are being moved (original inhabitants).

14. Population transfers generally constitute serious violations of the majority of human rights enshrined in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and other international instruments. As the application of this practice often singles out specific racial or religious groups it constitutes a violation of the rights laid down in the International Covenant on the Elimination of All Forms of Racial Discrimination, particularly article 5 of this text.

15. The practice of moving people into occupied territories clearly violates article 49 of the Fourth Geneva Convention which states:

> "The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies. ... Individual or mass forcible transfers ... are prohibited, regardless of their motive".

16. Considering the Convention's broad applicability (as emphasized in art. 41), this provision relates to population influx during and after armed conflicts until a political settlement has been reached.

17. In connection with population transfers, attention should also be given to the question of genocide. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines the crime of genocide to include acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group by "causing serious bodily or mental harm to members of the group" or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part".

18. The applicability of this clause in cases of mass expulsion which cause a heavy loss of life and in cases of the transfer of population in already inhabited areas which could cause the disappearance of a people seems evident.

19. The practice of population transfer also raises the question of self-determination, as defined in article 1 of both Human Rights Covenants:

> "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development".

20. The transfer of one people into the territory of another, whether occupied or not, as well as mass expulsions are clearly in violation of this right which is a prerequisite to the exercise of other fundamental human rights and freedoms.

21. Although a number of both individual and collective rights of peoples are grossly violated when population transfers are carried out, no international legal standard specifically addresses and outlaws the act of population transfer itself and the many manifestations it can and does take.

22. Habitat International Coalition feels that it is appropriate and necessary that the Sub-Commission undertake both immediate and long-term action concerning the human rights dimensions of population transfer.